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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,894	12/27/2000	Thomas J. Clough	ES-65 - DIV-8	1336
7590	02/20/2004		EXAMINER	
Thomas J. Clough			VO, HAI	
ENSCI Inc.				
P.O. Box 718			ART UNIT	PAPER NUMBER
Pismo Beach, CA 93448			1771	

DATE MAILED: 02/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/752,894	CLOUGH, THOMAS J. <i>JB</i>
	Examiner	Art Unit
	Hai Vo	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 December 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,6-10,15-17 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,6-10,15-17 and 20-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>0202</u> . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

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Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6-10, 15-17, and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Palmer et al (US 3,847,676). Palmer teaches a battery separator comprising a non-woven mat of polypropylene fibers having a mean diameter of 0.05 to 50 microns within the claimed range (column 11, line 64), and a plurality of open cell pores having an average pore size of less than 20 microns, within the claimed range (column 9, line 21). The mat has a porosity retention at least of 40% meeting a specific range as required by the claims (column 9, lines 13-15). Palmer teaches the mat comprising the wetting agent water mixture containing in the pores (column 7, lines 60-65). This reads on the liquid containing in at least apart of the pores. The polypropylene fiber of Palmer corresponds to Applicant's reduced particle size, non-spherical elongated porous organic polymer particle. It appears that Palmer and Applicant are using the same polymer resin to form the porous organic polymer particle and the fibers of Palmer have the fiber size within the claimed range. It is not seen that the fibers of Palmer would have performed differently from Applicant's porous polymer particles with respect to free flowing and resiliency properties. This is in line with In re Spada, 15 USPQ 2d 1655 (1990) which holds that products of

identical chemical composition can not have mutually exclusive properties. It is the examiner's position that Palmer anticipates the claimed subject matter.

Response to Arguments

3. Applicant's arguments with respect to claims 1-3, 6-10, 15-17, and 20-22 have been considered but are moot in view of the new ground(s) of rejection.
4. The art rejections over Clough (US 5,601,945) have been overcome by the verified statement filed on 08/22/2003. Since the US Patent 5,601,945 and the present invention have the same inventive entity, the US Patent 5,601,945 is disqualified as 102(e) prior art.
5. The specification objections have been overcome by the submission of the substituted specification filed on 12/05/2003. The substituted specification is exactly identical to Applicant's original specification of Application Serial No. 09/167,320, filed October 6 1998, now US Patent No. 6,224,003. Accordingly, the support for "the reduced particle size" and "liquid contained" in the claims are now found in substituted specification.
6. It appears that the current status of claim 3 should be identified as "previously presented" **not** "previously amended" in accordance with revised amendment practice. Correction is required in the next response.
7. In the telephone interview on October 21, 2003, the examiner suggested Applicant is submitting a copy of the specification of application Serial No. 09/167,320, filed October 6, 1998 now US Patent No. 6,224,003 to overcome the specification objections and place the instant claims in condition for allowance because the

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present invention is a division of US Patent No. 6,224,003. However, the examiner found that the instant claims are not patentable over Palmer et al (US 3,847,676) when updating the search. The examiner wishes to apologize for any confusion that may have been caused.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on M,T,Th, F, 7:00-4:30 and on alternating Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HV

Hai Vo
TC 1700